

**September 24, 2009 Minutes of  
Bigfork Land Use Advisory Committee  
Bethany Lutheran Church**

Committee members present: John Bourquin, Gary Ridderhoff, Al Johnson, Darrel Coverdell, Chuck Gough, Paul Guerrant, Sue Hanson and 11 members of the public.

Chairman Guerrant called the meeting to order at 4: 04 pm.

The Agenda was adopted with the addition under New Business: Johnson/Administrative Conditional Use Information (m/sc Guerrant/Coverdell) – unanimous.

Minutes of the August 27, 2009 meeting were approved - unanimous. (m/sc Gough/Bourquin). Minutes of the Special Meeting September 14, 2009 were approved – unanimous. (m/sc Bourquin/Coverdell)

**ADMINISTRATOR’S REPORT:**

**A. Sign-in Sheet:** Reminder to the public of the availability of BLUAC minutes through email and BSC website [bigforksteering.org/](http://bigforksteering.org/). Agendas are posted on the Flathead County Planning Office website [flathead.mt.gov/](http://flathead.mt.gov/)

**B. Application status:** County status on previous pending applications: Touris/Sneed Zone change was approved by the Flathead County Commissioners. Bigfork Children’s Theatre-Variance for Parking was approved by the Board of Adjustment.

**APPLICATIONS:**

**A. Norman Wolk/Mountain High Construction (FZV-09-05):** A request by Peter Hoveland of Mountain High Construction, Inc., on behalf of Norman Wolk for a Zoning Variance to property within the Bigfork, R-4 (Two-Family Residential) Zoning District. The applicants are requesting a variance to Section 3.12.040 (4) of the Flathead County Zoning Regulations. The property is located at 154 South Crestview Terrace in Bigfork.

**Staff:** Dianna Broadie explained the height ordinance in the Flathead County Zoning Regulations. If the applicant were to comply with the standards it would mean a very steep driveway or a flat roof neither of which would be appropriate in winter weather in Montana. The extra height (just under four (4) feet would not block views from neighbors.

**Bourquin:** Is it possible to adjust the roof pitch, for example 4 & 12? **A.** That still would not meet the requirement. The 4 & 12 is a dated pitch.

**Guerrant:** Would the height be a problem with the Bigfork Fire Department? **A.** Fire Dept. access is from the driveway where it is within the height limitation.

**Gough:** Bigfork Fire Department recently acquired a ladder truck.

**Applicant:** Peter Hoveland – has seen other examples of this type of construction. The owner is retiring and requires the main living area accessible from the street level. We did shift the direction of the structure because of the cul de sac elevation and knew we may be pushing the height limits. The owner bought the property 20 years ago before zoning was implemented in Bigfork.

**Ridderhoff:** When did you determine you had a height problem? A. When we were excavating. Why are you here so late to ask for the variance? A. The process takes 3 months.

**Gough:** I have a big concern when people go ahead and construct then come and ask for “forgiveness”. It happens too often. A. I would have had to lay off 6 employees. I took the gamble to keep my guys working.

**Johnson:** I sympathize with your employment situation but have an issue with people pushing the envelope. The problem is BLUAC functions to give the public a voice in the process. When you go ahead and build, you are effectively cutting out public process. I don’t think this is good from any standpoint.

**Bourquin:** I too have a problem with getting the cart before the horse. Is there a way to shorten the process? A. Staff: The Board of Adjustment is scheduled a year in advance and it is difficult to speed up the process because of timing. Hoveland: Could I have come straight to you before the County process?

**Guerrant:** Sure! We have had numerous applicants who have addressed BLUAC before completing the County process. That’s when the public process works and issues can be resolved or alternatives can be considered before going through the County. Harris: This is your committee and you set your own agenda. Any applicant can bring a project to you for informational purposes. This application was submitted on July 21, 2009. It takes three and ½ weeks to get notice to the papers for public notice process. We also want to make sure you have a staff report before considering an application.

**Hoveland:** I think your concerns are valid. Perhaps the Planning Office can suggest applicants approach BLUAC early for an informational meeting.

## **Public Agencies – None**

## **Public Comment**

**John Maddrell:** I live next to Kathy Naïve and appreciate that she looks forward to the structure blocking the lights from the Post Office. From my perspective this affects my view. Why couldn’t we have been notified before beginning construction? I just received my notice on Monday and was not aware the building was over the height restriction. This is totally backward. If this meeting had been held before construction, I would have protested. Something has to be done to prevent this. I don’t want to ask it be denied at this point, but would have liked to have had the opportunity to comment.

**Kathy Naïve:** I live directly above this home. I built my home in 1985 and believe the subdivision was poorly planned. It makes it further complicated that zoning comes in after the fact. Because of the situation, I think there has to be some give. I’m in favor of the variance.

**Carol Venable:** Since I’ve lived here, people often come for variances after the fact. I think it is unfair and a bad precedent to set. Someone needs to say no some time to stop this.

## **BLUAC:**

**Bourquin:** Was this measured from the natural grade or after fill? A. The owner spent \$60,000 modifying the grade and installing a retaining wall. It may measure 35’ when completed.

**Johnson:** This has been a good discussion regarding putting the cart before the horse. I would move to recommend approval of the variance with the following conditions:

1. The applicant meets all conditions of the staff report.
2. The Bigfork Fire Department submits a finding of fact.

Motion was seconded by Coverdell. Motion passed with one nay (Gough).

The application will be heard by the Flathead County Board of Adjustment, Flathead County Planning & Zoning Office, 1035 First Avenue West, Kalispell, on October 6, 2009, at 6:00 p.m.

**B. Bigfork Harbor Condos Homeowners Association (FDP-09-18):** A request by Bigfork Harbor Condos Homeowners Association, with technical assistance by OASIS Environmental for the replacement of seawalls and boat docks in the 100-year floodplain of the Swan River. The proposed seawall is approximately 980 feet long and will be three (3) to six (6) feet high. The docks will consist of 78 boat slips on single and multiple slip docks ranging in size from eighteen (18) by twenty-six (26) feet to thirty-eight (38) by forty-one (41) feet. The property is located at 270 Bridge Street in Bigfork.

**Staff:** Bailey Iott noted that normally Floodplain issues are handled Administratively. Because of the size of the project and public comment requesting a public meeting, we are presenting this to BLUAC for comment only. The application will also be presented to the Bigfork Stormwater Advisory Committee. The present seawall is constructed of logs and scattered riprap which is deteriorating. The length is 980 feet and will be from 3 to 6 feet in height. The new seawall will be constructed in front of the existing seawall, which will then be removed, and the area filled with gravel. There will be a reduction of 21 feet of dock sizes into the river. The applicant desires a long-term solution to the deteriorating seawall.

**Gough:** How many slips? A. There will be the same number of existing slips, 78.

**Johnson:** When was this built? A. It was built in 1980. Lakeshore regulations were put into effect in 1982. The Hwy. 35 bridge is the dividing line between Lakeshore and Floodplain regulations. This area is considered part of the Swan River. Agencies that oversee this area include the Conservation District, DNRC and Army Corps of Engineers.

**Guerrant:** Have all the government entities responded or permitted the replacement? A. Correct, contingent on County approval. Have you had comments from neighbors or the public? A. Yes, the letters are in the packet and I received one phone call, which I noted, plus the Bigfork Stormwater Advisory Committee.

#### **Public Comment:**

**Sue Hanson:** The concerns of BSAC include a direct discharge through the current seawall from the water feature on the property. The discharge serves as an overflow and carries sediment and debris directly into the Bay. BSAC would recommend diverting the overflow into the current stormwater mitigation features in place on the property, rather than direct discharge. The other concern is the boat launch area, which shows erosion, and the area has no drywell or other methods to maintain stormwater and boat washing on the property. The present configuration allows flow directly into the Bay. The replacement seawall is much needed and the design is well done. The consultant, OASIS, is a good firm and will provide excellent guidance. I have spoken to the engineer, John Gangemi.

#### **BLUAC:**

**Coverdell:** You have one letter that says they emphatically oppose the new seawall. Do you know why? A. No, that's all the letter states.

**Guerrant:** I think it's a great project and it's good to know the docks won't project so far into the bay.

**Coverdell:** Nice project.

**Johnson:** Nice project and appreciate taking the long docks out of the channel.

**OLD BUSINESS:**

**A. Report: September 14, 2009 Letter to Commissioners:** The Commissioners received the letter and said no.

**NEW BUSINESS:**

**A. Report by Bigfork Steering Committee:** Sue Hanson reported on behalf of the BSC. The BSC has acquired liability insurance, which will also cover BLUAC. The insurance agent is also looking into d & o. The sub-committees established last month are all working on their projects. Sally Janover has been taking video, which might be used, in an informational DVD.

**B. Administrative Conditional Use:** Al Johnson referred BLUAC to Page 33, section 3.08.030 (12) of the Flathead County Zoning Regulations. He then referred to Page 34, section on Conditional Use Standards referencing Page 8, 2.06.045, that lists the procedure for Administrative Conditional Use. An example would be, Page 151, 4.07, which lists 5 conditions that would be subject to an Administrative Conditional Use Permit. The Commissioners could administratively remove one of the 5 conditions. The process would be:

1. Apply for Conditional Use Permit at the Planning Office.
2. BLUAC review.
3. Board of Adjustment approval.
4. Commissioner's approval to remove one of the conditions.

**Jeff Harris:** Typically, the Commissioners do not have the authority to ignore regulations. It becomes a liability situation. The variance process is used for defensible action. As Zoning Administrator, I have authority to issue Administrative Conditional Use Permit as long as it is not protested. The Commissioners approve/disapprove of Administrative Conditional Use Permits. Any Administrative Conditional Use Permit is appeal-able back to the Board of Adjustment.

**PUBLIC COMMENT:**

None

Meeting was adjourned at 5:50 p.m.

Sue Hanson  
BLUAC Secretary